IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 579 of 1993
with
CRIMINAL APPEAL NO.628 Of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

ASHWINBHAI HARIBHAI ANAND & 1 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

==========

Appearance :
MR AD SHAH for appellant(s) : 1 and 3 in Cr.a579/1993.
Mr.M.J.Budhbhatti, for appellant no.2 in Cr.a628/1993
Mr.L.R.Pujari, for opponent-State in Cr.a579/93 & Cr.a 628/93.

==========

CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 26/10/2007

ORAL JUDGMENT

1. Both these appeals arise out of the judgment and order

of conviction and sentence dated 31-3-1993 rendered by the learned Special Judge, Ahmedabad, in Special Case no.31 of 1990 whereby the appellant-original accused no.1 was sentenced to undergo simple imprisonment for two years and fine of Rs.1000/- , in default, simple imprisonment for three months for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (“the Act: for short). He was also sentenced to undergo S.I. for two years and fine of Rs.1000/-, in default, simple imprisonment for three months for the offence under Section 13(1)(d)(i) and (ii)of the Act punishable under Section 13(2) of the Act. The substantive setences against the appellant-original-accused no.1 was also ordered to run concurrently. Similarly, each of the appellants -original accused no. 2 and 3 were sentenced to undergo simple imprisonment for two years and to pay fine of Rs.1000/-,in default, each of them to undergo further simple imprisonment for three months for the offence under Section 12 of the Act.

1.1 In Criminal Appeal no.579 of 1993, the appellants-original accused nos.1 and 3 challenge their conviction and sentence while in Criminal Appeal no.628 of 1993, the appellant-original accused no.2 challenges his conviction and

sentence as stated above. They are therefore, being disposed of by this common judgment.

2. The facts giving rise to the present appeal as emerging from the record of the case can be summarized as under:

2.1 On 1-12-1989, the complainant Laxmanji Odhavji Goyani had lodged a complaint before the P.I., ACB, Ahmedabad against the appellant-original accused no.1-Ashwinbhai Haribhai Anand alleging therein that he is a resident of Bungalow no.10, Bhagat Bapanagar, Vastral Road, Sureliya Estate, Near Rabari Colony, Ahmedabad, since last eleven years and that the said Bungalow was constructed in the name of his father who is also residing with him. The complainant has further stated that six years back one more room was constructed behind the said Bungalow; that the annual Municipal tax in respect of the said property assessed at Rs.92/- were being paid by the complainant regularly. It is further the case of the complainant that on 29-11-1989 , the appellant-original accused no.1- an employee from the Tax Department, Rakhial Zone, visited the said house of the complainant to serve the tax bill. At that time, the accused no.1 noticed that machines and other articles meant for diamond cutting were lying in the said additional room which

was constructed six years back, and therefore, the accused no.1 told the complainant that the premises is being used for commercial purpose and that the tax bill has to be issued accordingly. According to the complainant, so saying, the accused no.1 left his residence without handing over the tax bill to him, however, the accused no.1 had shown the complainant the tax bill, according to which, gross rateable assessment was shown as Rs.400/- while the net rateable assessment was shown as Rs.360/- as in the previous year also. The complaint then realized that though he was not doing the business of diamond cutting or using the premises for commercial purpose, the tax bill will he assessed on commercial basis resulting which he would have to pay higher tax, and therefore, on the same day, at 3.00 p.m., the complainant went to the Tax Department of the Municipal Corporation where he met the appellant-original accused no.1 and requested him to make proper assessment of tax bill as he is not using the premises for diamond cutting industry. According to the complainant one Bharatbhai was also present with him (complainant) at that time. Then, the appellant-original accused no.1 came outside from the office and told the complainant that till then the tax bill is not put up before the superior officer for examination and promised to do the

needful if the complainant was prepared to pay Rs.400/- The complaint then expressed his inability to pay the amount, there and then, as he was not having sufficient moneys with him, whereupon, the appellant-original accused no.1 suggested that the complainant meet him in the office on the next day i.e. 30-11-1989 with the amount of bribe between 3.00 p.m. and 6.00 p.m. and assured the complainant that he would be present. However, the complainant did not go to the office of the appellant-original accused no.1 on 30-11-1989 as he had some work at his house. According to the complainant, he was not willing to give the bribe amount of Rs.400/-, and therefore, he lodged the complaint with the P.I. Anti Corruption Bureau, Ahmedabad, on 1-12-1989 who recorded the same. The P.I. ACB, thereafter, called for two Panchas, the Panchas were introduced to each other as also to the complainant. The P.I. also introduced himself to the Panchas. The Panchas having shown their willingness to act as Panchas, the contents of the complaint were read over and explained to the Panchas. The complainant also narrated the facts of the complaint to the Panchas, the Panchas were then made to understand the use of anthracene powder on the currency notes in a trap. The P.I. thereafter, asked the complainant to produce the bribe amount whereupon the complainant had

given four currency notes of the denomination of Rs.100/- each. These currency notes were then smeared with anthracene powder by Police Constable Balchandra under the instructions of P.I. Vyas and necessary experiment under ordinary light and ultra violet lamp was carried out. Presence of anthracene powder were noticed on both sides of the currency notes when viewed under ultraviolet lamp but not when seen under ordinary light. The Police Constable then put these currency notes smeared with anthracene power on the left pocket of the bush-shirt of the complainant as instructed by the P.I. It was also ensured that no particle of anthracene powder was let out on the person of the Panchas and all other members of the raiding party. The complainant was advised not to touch the currency notes until demand is made by the appellant-original accused no.1 and to give the pre-arranged signal as and when the demand is made by the appellant-original accused no.1 and the bribe money is accepted by him. Panch no.1 was asked to remain with the complainant all throughout and to see and hear the conversation that takes place between the complainant and the appellant-original accused no.1. The preliminary Panchnama was drawn and completed wherein the serial number of the tainted currency notes were mentioned.

Ultimately, after following all the statutory procedures for the laying of a successful trap, the Panch witnesses and all the members of the raiding party proceeded to the office of the appellant-original accused no.1 on that very day on 1-12-1989. They stopped their vehicle near Sindhi High School. The Panch no.2 and other members of the raiding party took their position near the office of the appellant-original accused no.1 i.e. Office of the Muncipal Corporation, Rakhial Zone, Ahmedabad while the Panch no.1 and the complainant went inside the said office in the cellar where the appellant-original accused no.1 and other employees of the tax Department were present. The complainant told the appellant-original accused no.1 that he had come as per the talk with him the other day. The appellant-accused no.1 searched for the tax assessment papers of the complainant and then told the complainant that he had left the papers in the dicky of his scooter and that the scooter had been taken away by one of his friends, and therefore, the complainant may meet him after an hour or at 5.00 p.m. Thereupon, the complainant and Panch no.1 informed the P.I, ACB, accordingly, and all of them then went to Bapunagar Maleksaban Stadium where they waited till 17.05 hours, then came back and again stopped the vehicle near Sindhi High School and in the same manner, the

complainant and Panch no.1 went into the office of the appellant -original accused no.1, however, since the friend of the appellant-original accused no.1 had directly gone to his house, and therefore, the complainant may meet him on 2-12-1989 between 11.00 a.m. and 4.00 p.m. As a result the trap could not materialise on 1-12-1989. Again on 2-12-1989 at about 10.00 a.m. to 10.30 a.m trap was arranged in a similar fashion after completing all the required formalities under law, but since the appellant-original accused no.1 was on leave on that day, the trap was not successful. On both these occasions entries were made in the Panchnamas which were drawn to that effect and the tainted currency notes which were to be offered as bribe to the appellant-original accused no.1 were deposited back in the ACB Office. The P.I., ACB then told the Panchas that they will be informed as and when the trap is to be laid. The complainant was asked to contact the appellant -original accused no.1 and if he again demands bribe to approach the ACB Office. Thereafter, on 4-12-1989 at 10.00 a.m. when the complainant and his friend Babubhai Vallabbhai Patel were passing from Rakhial Crossing, the appellant-original accused no.1 called the complainant and asked the complainant as to what is to be done regarding the taxes to which the complainant replied that he was in a hurry.

The appellant-original accused no.1 then told that it was alright and asked the complainant to meet him(appellant-original accused no.1) in his office with the moneys in the noon hours as per the previous talk to which the complainant agreed. The complainant then contacted the P.I. Vyas, ACB, when a further complaint was recorded wherein the complainant has stated with regard to the failure of the earlier two traps and that a fresh trap is to be arranged. Thereupon, on that day i.e. 4-12-1989 itself the complainant and Panch Witnesses were called and the entire procedure of laying a successful trap as per details mentioned in respect of the trap attempted on 1-12-1989 was followed and the tainted currency notes were put in the right pocket of the Jabha worn by the complainant. Thereafter, the complainant, Panchas and all the members of the raiding party went by Government jeep and the jeep was halted near Monogram Police Chowky, Rakhial. As per instructions of P.I. Mr. Vyas, the complainant and Panch no.1 went on foot to the cellar of office of the appellant-original accused no.1 and the other members of the raiding party took their possession nearby the said office. On making enquiries, the complainant was told by an employee sitting near the table of the appellant-original accused no.1 that the appellant -original accused no.1 had gone outside for

tea. Then, the complainant and Panch no.1 went out of the office near the gate of the building. The appellant-original accused no.1 came from the opposite side, met the complainant and enquired of him as to why he had not turned up the other day to which the complainant replied that he had been to his office but appellant-original accused no.1 was not present. The appellant-original accused no.1 then told the complainant that as per the previous talk, he had told the appellant-accused no.3 who was sitting behind the table of the appellant-original accused no.1 to do his work as he (the appellant-original accused no.1) was out of station. The appellant-original accused no.1 then told the complainant that his work will be done. Thereafter, the complainant, Panch no.1 and the appellant-original accused no.1 came inside the office of the appellant-accused no.1. The complainant and Panch no.1 took their seat against the table of the appellant-original accused no.1. The appellant-original accused no.1 suggested to one Bhavsarbhai that they may go out. Thereupon, appellant-accused no.3 Bhavsarbhai, the complainant, Panch no.1 and the appellant-accused no.1 went out of the office and were chatting with each other. At that time, the appellant-original accused no.1 told the appellant-original accused no.3 that as per the previous talk which took

place on Friday between them (appellants original -accused nos.1 and 3), the work of the complainant be done. Thereupon, the appellant-original accused no.1 took out one bill of Ahmedabad Municipal Corporation from his pocket and handed it over to the appellant-accused no.3 who read the said bill. The appellant-original accused no.1 then told the appellant-original accused no.3 that previously the work of the complainant was agreed to be done at Rs.400/- but now the work be done at Rs.300/- including the tax amount. Thereafter, all of them went inside the office of the appellant -original accused no.1. The appellant -original accused no.3 took his seat against the seat of appellant-original accused no.1 while complainant and Panch no.1 stood behind the appellant-original accused no.1. On the basis of the bill which was handed over by the appellant-original accused no.1 to the appellant-original accused no.3, the appellant-original accused no.3 prepared a white coloured receipt and handed it over to the appellant-original accused no.2-Merubhai who was having his seat nearby the table of the appellant-original accused no.3 . The appellant-original accused no.3 also told the appellant-original accused no.2 to accept Rs.300/- from the complainant. After going through the said receipt the appellant-original accused no.2 asked the complainant to pay

Rs.300/-. The complainant then took out currency notes of Rs.300/- from the right pocket of his Jabha and after counting it handed it over to the appellant-original accused no.2 who in turn counted the same and put these notes in the cash box. The appellant-original accused no.2 then handed over the white receipt along with the tax bill to the complainant. Soon the complainant came out from the office of the appellant-original accused no.1 and gave the signal as pre-fixed. Thereupon, all the members of the raiding party including PI Vyas ACB, Ahmedabad came there and PI Vyas after necessary introduction of all the members of the raiding party and Panchas to the appellants-original accused asked the accused persons not to move. Panch no.1 narrated the said conversation between the complainant and all the appellants-accused to the P.I.. The P.I. then ascertained the names of all the appellants -accused and instructed the lamp operator to carry out the experiment of ultraviolet lamp on all the members of the raiding party except the complainant and the appellant-original accused no.2. Accordingly, on carrying out such experiment on all these persons under normal light as well as under ultraviolet lamp nothing significant appeared. Thereafter, when similar experiments were carried out presence of anthracene power was found on the tips of the

fingers of the appellant-original accused no.2, on the fingers, palm of both the hands of the complainant, on the right pocket and the border of the Jabha worn by the complainant, in the inner portion of the cash box, on the currency notes of Rs.300/- i.e. three currency notes in the denomination of Rs.100/- each recovered from the cash box, when viewed under ultraviolet lamp. The numbers of these currency notes when compared with the numbers of the currrency notes mentioned in the trap Panchnama of 4-12-1989 they tallied. Another currency note of Rs.100/- was also recovered from the right pocket of the Jabha worn by the complainant and when this currency note was viewed under ultraviolet lamp, presence of anthracene powder was noticed. Similarly, apart from the above currency notes of Rs.300/-, a currency note of Rs.20/- was recovered from the cash box which also showed presence of anthracene powder when viewed under ultraviolet lamp, however, the number of this currency note of Rs.20/- did not tally with the numbers of currency notes mentioned in the trap Panchnama. On personal search of the complainant tax bill and receipt was also recovered. The cash box was locked through Panch no.2 and the keys were kept with Panch no.2. The seizure memo in respect of the articles seized are at Exhs.20 and 21. A detailed second part of the Panchnama of 4-

12-1989 was prepared. The appellants-accused were thus caught red-handed accepting the bribe amount of Rs.300/- from the complainant on 4-12-1989. The PI, ACB, Ahmedabad then commenced investigation and on completion of investigation as the appellants-accused were public servants,necessary sanction was sought and obtained vide Exh.27 from the competent authority for prosecuting the appellants-accused. Thereafter, charge-sheet came to be submitted to the Court of the learned Special Judge, City Sessions Court, Ahmedabad. The learned Special Judge framed charge Exh.2 on 10-1-1991 against the appellant-original accused no.1 for the offence under Section 7 and Section 13(1)(d)(i) and (ii) of the Act and against the appellants-original accused nos.2 and 3 for the offence punishable under Section 12 of the Act. The charge was read over and explained to the appellants-accused who pleaded not guilty to the charge and claimed to be tried.

3. To prove its case against the appellants-accused the prosecution has examined – (1) PW 1 complainant Laxmanbhi Odhavji Goyani at Exh.13, PW 2 Panchwitness Bharatkumar Kuberbhai Solanki at Exh.17, PW 3 P.I Vinod Jashwantray Vyas, Investigating Officer at Exh.23. The prosecution has also produced documentary evidence such as sanction to

prosecute Exh.27, the complaint -Mark A (Exh.24) dated 1-12-1989; the complaint -Mark B (Exh.25) dated 4-12-1989, trap Panchnamas which failed dated 1-12-1989 and 2-12-1989 at Exhs.18 and 19 respectively, the trap Panchnama dated 4-12-1989 at Exh.20, the seizure memo in respect of the appellant-original accused no.1 dated 4-12-1989 at Exh.21, the seizure memo in respect of the appellant-original accused no.2 dated 4-12-1989 at Exh.22 and the trap Panchnama in respect of appellant-original accused no.3 at Exh.14, the Muddamal Municipal bills produced by the defence at Exhs15 and 16. After recording the evidence of prosecution witnesses closing Purshis was filed by the prosecution and the further statement of the appellants-accused under Section 313 of the Criminal Procedure Code came to be recorded the sum and substance of which is to the effect that they were falsely involved in the case and his case was of total denial. It was also their defence that the amount of bribe as thrust into the cash box. The appellant original-accused no.1 in his defence has stated that he had kept the tax bill with him as the complainant had refused to accept the same. The appellant-original accused no.3 has denied that any conversation had taken place between him and the appellant-original accused no.1 on 4-12-1989 or that he had handed over the tax bill to the appellant-

original accused no.2 and asked him to collect Rs.300/-, but the tax bill was received by the complainant. The appellant-original accused no.2 has stated in his defence that the complainant had told him that the tax bill was of Rs.300/- and so he accepted Rs.300/-before he received the tax bill. He also submitted that he had not received the tax bill from the complainant.

4. On appreciation, evaluation , analysis and scrutiny of the evidence adduced by the prosecution both oral as well as documentary, the learned Special Judge held that the prosecution has established beyond reasonable doubt that the appellant-accused no.1 did initially demand Rs.400/- towards bribe money from the complainant and thereafter reduced the bribe amount to Rs.300/- including tax amount and as per the suggestion made by the appellant-original accused no.3, the appellant-original accused no.2 demanded and received the bribe amount of Rs.300/- from the complainant on 4-12-1989, and therefore, held all the appellants-original accused nos.1, 2 and 3 guilty for the offence with which they were charged and passed the judgment and order of conviction and sentence as stated in para-1 of this judgment.

5. I have heard the learned Counsel Mr. A.D.Shah for the

appellants-original accused nos.1 and 3, learned Counsel Mr. M.J.Budhbhatti for the appellant-original accused no.2 and learned A.P.P. Mr. Pujari for the respondent -State at length and in great details and have also perused the record with due care and caution.

6. Learned Counsel Mr. A.D.Shah for the appellants-original accused no.1 and 3 as also learned Counsel Mr. M.J.Budhbhatti for the appellant-original accused no.2 while taking me through the entire evidence on record as also the reasons assigned and the conclusions reached by the learned Sessions Judge have submitted that the whole case of the prosecution is improbable, highly exaggerated and prayed that the appeal be allowed, the order of conviction and sentence passed by the learned Special Judge be set aside and the appellants-accused be acquitted of the offence in question. In support of their submission, they have raised several contentions. I may state here, that since I am in complete agreement with the views expressed by the learned Special Judge, I do not deem it necessary to discuss the evidence of all the witnesses in great details and burden the record, but would only discuss the evidence and documents as are necessary for the disposal of these appeals on merits.

7. Firstly, it was contended by the learned Counsel Mr. A.D.Shah for the appellants-original accused nos.1 and 3 that there are major contradictions in the evidence of the complainant regarding the date, place and time in reference to the demand of illegal gratification made by the appellant-original accused no.1. According to the learned Counsel, in the complaint Exh.18, the complainant has stated that when the appellant-original accused no.1 came to the house of Laljibhai, the neighbour of the complainant also, the appellant-original accused no.1 called the complainant and asked the complainant to come with the amount of illegal gratification during the office hours, however, this fact does not find place in his testimony before the Court which is a major omission which has been ignored. The learned Counsel next contended that at the first point of time when the alleged demand of Rs.400/- was made, one Bharatbhai, friend of the complainant was present, but he was not examined by the prosecution which is fatal to the case of the prosecution. The learned Counsel next contended that as per the evidence of the complainant and Panchwitness, after lodging of the complaint, the appellant-original accused no.1 met them twice. According to the learned Counsel on those two occasions also the appellant-original accused no.1 has not

made any demand of illegal gratification, and hence, the prosecution has failed to prove the demand of illegal gratification from the complainant. The learned Counsel next contended that even though traps had failed on two occasions and only on the third occasion, the trap held on 4-12-1989 had succeeded, the same Panchas were used in all the traps, and therefore, the Panchas were selected ones with an ulterior motive to falsely rope in the accused in the commission of the offence in question. The learned Counsel next contended that the receipt of Rs.58.12p (Exh.59) and the tax bill (Exh.60) were handed over by the appellant-original accused no.2 to the complainant, however, experiment of ultraviolet lamp was not carried out on these documents. According to the learned Counsel, if such experiment was carried out, powder marks would have been found on them, if in fact, the appellant-original accused no.2 had handed over these documents to the complainant because it was after the receipt of the currency notes by the accused no.2 that the said two documents were given to the complainant. According to the learned Counsel, non-examination of these two documents under ultraviolet lamp clearly shows that a pre-planned trap was arranged in collusion with Investigating Officers and Panchwitnesses by the complainant with an ulterior motive to involve the

appellant-original accused in the crime in question.

8. Learned Counsel Mr. Budhbhatti for the appellant-original accused no.2 submitted that taking into consideration the totality of the evidence on record, it seems that by hook or crook , the Investigating Officer tried to rope in all the three appellants-accused who were serving in the Ahmedabad Municipal Corporation as Junior Clerks in a false case with ulterior motive. According to the learned Counsel even though the traps had failed on the first two occasions, a consecutive third trap was held which shows that by creating false story and false evidence, all the three appellants were roped in a false case with an ulterior motive. The learned Counsel next submitted that 4-12-1989 was the last date for payment of tax bill and as the Municipal Corporation office was crowded with long queques of tax payers, there could not have been the slightest possibility for the appellant-original accused no.2 to demand illegal gratification or to accept such amount, and therefore, the entire incident of trap which was narrated in the Panchnama is totally got up and fabricated with an ulterior motive to rope in all the three appellants in the crime in question. Considering all these aspects, the learned Counsel for the appellant-original accused no.1 and 3 as also the learned Counsel for the appellant-original accused no.2,

submitted that the learned Special Judge has committed grave error in convicting the appellants-accused, and therefore, these appeals deserve to be allowed.

9. As against that the learned A.P.P. Mr. Pujari for the respondent-State has submitted that the prosecution has satisfactorily established the case of demand of bribe money by the appellant-original accused no.1 and acceptance of the bribe amount by the appellant-original accused no.2 with the able and collective effort of appellants-original accused nos.1 and 3 who had abetted in the commission of the crime through the trustworthy and reliable evidence of the complainant which is fully corroborated by the evidence of independent Panchwitness and other documentary evidence on record. According to the learned Counsel, the findings arrived at by the learned Special Judge being quite legal and proper, no interference is required. It is the submission of the learned Counsel that the learned Special Judge is perfectly justified in passing the judgment and order of conviction and sentence against the present appellants-original accused, ,and therefore, the appeal deserves to be dismissed.

10. Here, in the instant case, the question that falls for consideration before me is whether the present appellant-original accused no.1 initiated the demand of illegal

gratification and in pursuance to such evil design and criminal intent, he directed the appellant-original accused no. 3 to prepare the tax bill for Rs.58.12p. and to pass over the same to the accused no.2 and to ask the appellant-original accused no.2 to accept Rs.300/- including tax bills of Rs.58.12p. and the accused no.3 by giving a gesture by means of winking his eyes asked the accused no.2 to receive the said Rs.300/- which the appellant-original accused no.2 did, and thereby, all the three appellants-original accused have participated in the commission of the crime in question. In order to answer this question, it is necessary to advert to the evidence of the complainant Laxmanbhai Odhavji Goyani PW 1 Exh.13. The complaint in his evidence has stated that on 29-11-1989 when appellant-original accused no.1 had been to his residential house standing in the name of his father for serving the Municipal tax bill he happened to see an additional room constructed in that premises wherein he found some machineries of diamond cutting. According to the complainant, up to 1988 he was doing the business of diamond cutting in Surat but no such business is done in the premises and that the said additional room was in existence prior to six years and that his father used to pay the annual tax bill of Rs.92/-per year. However, the appellant-original accused no.1

on seeing the said machineries told the complainant that the assessment of the tax in respect of the premises shall have to be made at a higher rate as the premises was used for non residential purpose, and therefore, he left the premises without serving the Municipal tax bill but told the complainant that if he wants to get the assessment of tax in respect of his residential house reduced , he would have to pay Rs.400/- and asked him (complainant) to visit his office on the next day and that he (appellant-original accused no.1) would reduce the assessment of tax in respect of his residential house if Rs.400/- would be paid. The complainant has further deposed that on the next day i.e. 30-11-1989 as he was busy with some work, he did not go to the office of the appellant-original accused no.1, however, on 1-12-1989 the complainant met the appellant-original accused no.1 near Rakhial when the appellant-original accused no.1 repeated his demand of Rs.400/-for reducing the assessment of tax to which the complainant told the appellant-original accused no.1 that he was in a hurry and that he was not having that much moneys with him. The complainant was not willing to give the bribe amount, therefore, on 1-12-1989 he along with one Babubhai Vallabhbhai went to the ACB Office where P.I. Mr. Vyas recorded the complaint (Exh.23). The witness had

identified his signature to the complaint vide Mark 11/1. P.I.Vyas then requisitioned for two Panchas. Upon arrival of the Panchas, they were introduced to each other and the complainant. P.I. Vyas then asked the complainant to produce the amount to be given as bribe and the complainant produced Rs.400/-consisting of four currency notes of the denomination of Rs.100/-each. The Panchas were then made to understand the use of anthracene powder on the currency notes in a trap by Constable Balchandra and he also held demonstration. The said currency notes when smeared with anthracene powder and seen under ordinary light nothing significant was visible, but when these currency notes were viewed under ultraviolet lamp light blue shining colour appeared. The said currency notes were then put into the pocket of the complainant by Constable Balchandra. The numbers of these currency notes were mentioned in the preliminary Panchnama. The bottle of anthracene powder was kept back in its place and the paper which was used for smearing the currency notes with anthracene powder was destroyed. The Constable then washed his hands with soap and water. The hands of the Constable were then viewed under ultra-violet lamp and no trace of anthracene powder was noticed. The complainant was instructed not to touch the currency notes until the demand is

made by the appellant-original accused no.1. and that as soon as the bribe amount is demanded and accepted to give the arranged signal. Panch no.1 was instructed to remain constantly in the company of the complainant and to see and hear the conversation which takes place between the complainant and the appellant-original accused no.1 at the office of the appellant-original accused no.1. Panch no.2 was asked to remain with the raiding party and to reach the spot on receipt of the signal. Panchnama to the aforesaid effect was drawn and completed between 2.00 to 2.30 p.m. The complainant has further deposed that thereafter all of them proceeded towards Rakhial Zonal Office in a Government Vehicle and halted the vehicle near Monogram Mills. From there the complainant and Panch no.1 went to the Rakhial Zonal office on foot where we met Ashwinbhai-appellant-original accused no.1 who told the complainant that his tax papers were not with him as he had put them in the dicky of his scooter and that his friend had gone out with his scooter, and therefore, the work relating to tax of his house could not be dealt with. This witness has further stated that the appellant-original accused no.1 then suggested that the complainant meet him on the next day. The complainant and Panch no.1 then returned near Monogram Mills where the

raiding party was stationed and informed accordingly whereupon under the instructions of PI Vyas, Constable Balchandra took over possession of the tainted currency notes by drawing a Panchnama from the complainant. Thus, the trap of 1-12-1989 failed. Thereafter, again on 2-12-1989, this witness was called at the ACB Office between 10.00 to 10.30 a.m. when the same two Panchas who came on the other day were also present. All the procedures as required under the Act were once again repeated on 2-12-1989 in a similar fashion, using the same currency notes which were used on 1-12-1989 after comparing the numbers with the numbers mentioned in the preliminary Panchnama and finding them to have tallied. The currency notes were put into the Jabha pocket of the complainant by the Constable after treating the same again with anthracene powder, viewing them under ultraviolet lamp and noticing the presence of anthracene powder. It was also ensured that no particles of anthracene powder were left in the hands of the Constable and all the members of the raiding party. The Panchnama was also drawn to the said effect and all of them left for the Rakhial Zonal Office, halted the vehicle near a school and from there the complainant and Panch no.1 went to the office of the appellant-original accused no.1 and on making inquires, it was

learnt that the appellant-original accused no.1 was on leave. The complainant has further deposed that on bringing this fact to the notice of P.I. Vyas, a Panchnama was drawn and the tainted currency notes were recovered from the possession of this witness and other currency notes were given with the advice that as and when the appellant-original accused again demands the illegal gratification, the complainant may contact the PI, ACB. Thus, the trap of 2-12-1989 also failed. The complainant has further deposed that on 4-12-1989 he happened to meet the appellant-original accused no.1 at Rakhial. At that time, the appellant-original accused no.1 enquired of him as to what is to be done with regard to the assessment of his tax bill or whether he should submit the bill in the office (in the form of threatenting) to which the complainant replied that he is in a hurry and that he would meet him in his office in the afternoon. The appellant-original accused then suggested that he(complainant) may meet him at any time between 1.00 p.m. to 4.00p.m. This witness has further stated that as he was not willing to give the bribe amount, he approached the office of the ACB, Ahmedabad, where he met P. I. Vyas who again recorded a further complaint (Mark 11/2) wherein the complainant had put his signature and stated that the contents thereof as well as the

contents of earlier complaint Mark 11/1 are true and correct. P.I. Vyas then summoned the same two Panchas as was requisitioned on 1-12-1989 and 2-12-1989 and in presence of these Panchas asked the complainant to produce the bribe amount and the complainant produced four currency notes of the denomination of Rs.100/-. Thereafter, after strictly following the due procedure for laying a trap, like drawing the Panchnama, mentioning the numbers of the said currency notes therein, smearing the bribe money with anthracene powder, carrying out the experiment of viewing the currency notes smeared with anthracene powder under ultra violet lamp and noticing the presence of anthracene powder on these currency notes and also ensuring that no particle of anthracene powder is left out on the hands of the complainant, the panchwitness or any of the members of the raiding party. The Constable then put the tainted currency notes into the right pocket of the Jabha worn by the complainant. Similar instructions as given on 1-12-1989 was given to the complainant as also the Panch nos. 1 and 2. All of them then left by Government vehilcle towards the office of the appellant-original accused no.1, halted the vehicle near Monogram Mills. From there complainant and Panch no.1 went to the office of the appellant-original accused no.1 but

the appellant-original accused no.1 was not available on his seat, but the employee who was occupying the table next to the appellant-original accused no.1 informed the complainant that the appellant-original accused no.1 had gone out for tea, and therefore, the complainant and Panch no.1 went towards the gate of the office where they met the appellant-original accused no.1. On seeing the complainant, the appellant-original accused no.1 told the complainant that his work shall be completed and so saying the appellant-original accused no.1 came to his table in the cellar along with him. At that time, the appellant-original accused no.1-Ashwinbhai introduced the appellant-original accused no.3 to the complainant and told him to prepare his bill by accepting Rs.300/- instead of Rs.400/- i.e. Rs.58.12p towards the tax bill and the remaining amount to be kept with the accused no.3. The witness has specifically stated that this talk had taken place in his presence by appellant-original accused no.1 by calling the appellant-original accused no.3 near him and handing over one bill to the appellant-accused no.3. Thereafter, the appellant-original accused no.3 prepared the tax bill and handed over the same to the appellant-original accused no.2-Merubhai at the cash counter. At that time the appellant-original accused no.2 stared at the appellant-

original accused no.3 who by winking his eyes gave a gesture to accept the moneys. Thereupon, the appellant-original accused no.2 did accept the amount of Rs.300/- and after counting, kept the same in the cash box. According to this witness, thereafter the appellant-original accused no.2 handed over the white receipt of Rs.58.12p. to him. This witness has clearly stated that all throughout this transaction, Panch no.1 was present with him. This witness has also identified the appellant-original accused no.2 in the Court. Soon the complainant came out of the office and gave the pre-fixed signal between 4.00 to 4.30 p.m. of 4-12-1989 whereupon all the members of the raiding party including Panch no.2 arrived at the spot. P.I. Mr.Vyas instructed everyone not to move and collected all the information from Panch no.1 and came to know that the moneys were kept in the cash box. When viewed under the ultra violet lamp presence of anthracene powder was noticed. The currency notes given by way of bribe was taken out from the cash box through Panch no.1 and upon viewing them under ultraviolet lamp, presence of anthracene powder was noticed. Another currency note of Rs.20/-was also taken from the cash box and on viewing it under ultraviolet lamp, visible marks of anthracene powder was seen. There was much money in the cash box. The

number of the three currency notes of the denomination of Rs.100/- when compared with the number of the currency notes mentioned in the preliminary Panchnama of 4-12-1989, tallied and was recovered. The currency note of Rs.20/-was also recovered. Thereafter , the hands of each one present including original accused nos.1, 2, 3, Panch no.1 and the hands of this witness was viewed under ultraviolet lamp and light blue shining colour of anthracene powder was noticed on the hands of this witness , on the hands of Panch no.1 as also on the hands of the appellant-original accused no.2. Thereafter, light blue shining colour of anthracene powder was also noticed inside the right pocket of the Jabha worn by the complainant as also on the border of the pocket of the said Jabha when viewed under ultraviolet lamp. The extra amount of Rs.100/- which remained with this witness as also the tax bill of Rs.58.12p. was also recovered by PI Mr. Vyas. A detailed Panchnama was prepared at the spot, seizure memos and receipt were issued in respect of the articles seized to the concerned persons. They are at marks 11/6 and 11/8. In this manner, the trap of 4-12-1989 was successful .

10.1 In cross examination this witness has categorically stated that on 1-12-1989 the appellant original accused no.1 had demanded Rs.400/- at the Office of the Corporation at

Rakhial and not at his house. This witness has also stated that on 2-12-1989 P.I.Mr. Vyas had specifically instructed him to approach him (Mr.Vyas) at the ACB Office only if demand is made by the appellant-original accused again. This witness has also made a positive statement that on 4-12-1989 the appellant-original accused no.1 had called the appellant-original accused no.3 outside the office and told him to complete the work of this witness(complainant) by accepting Rs.300/- instead of the previously agreed amount of Rs.400/-. This witness has clearly stated that on 4-12-1989 he had given the bribe amount of Rs.300/- including the tax amount of Rs.58.12p. to the accused no.2 as already suggested to him by appellant-original accused no.1 in presence of appellant-original accused no.3. According to this witness, the accused no.2 put the bribe amount into the cash box. The witness has also stated that the amount was accepted by the accused no.2 after gesture given by the accused no.3 by winking his eyes. This witness has in very clear terms also stated that though there was heavy crowd of tax payers on that day, he was given special treatment and his tax receipt was prepared without asking him to stand in queue. The witness has also stated that it is not correct to say that he had given Rs.300/- to the accused no.2 before receiving the receipt. He has also denied

the suggestion that Panch no.1 was closely related to him or that Panch no.1 used to visit his house. It is important to note here that the recitals made by the complainant in the complaint are consistent to what he has stated in his deposition on all material aspects.

11. Turning now to the evidence of Panch no.1 Bharatkumar Kuberbhai Solanki PW 2 at Exh.17, this witness has clearly deposed that the complaint of the complainant was read over and explained to him and the other Panch and from that he learnt that there was demand of illegal gratification in respect of reasonable assessment of tax in respect of the complainant's house by the employees of Municipal Corporation. This witness has given almost the similar version as deposed to by the complainant in his evidence on the material aspects of demand, offer and acceptance. The witness has admitted that the signatures in the Panchnamas are made by him as also the other Panch in presence of P.I. Mr. Vyas and that the contents therein are correct. This witness has also admitted that the traps of 1-12-1989 and 2-12-1989 have failed for the reasons as stated by the complainant in his evidence. He has also deposed with regard to the acceptance of Rs.300/- by the appellant original

accused no.2 and putting the same in the cash box after counting and also the part played by the appellant-original accused no.3 at the instance of the appellant-original accused no.1. The witness has also deposed as to the presence of anthracene powder in the currency notes recovered from the cash box as also to the effect that numbers of these currency notes tallied with the numbers of the currency notes mentioned in the Panchnama of 4-12-1989 when compared. This witness has also identified the appellants original accused nos.2 and 3 in the Court. This witness has also stated that he had come to know only on 4-12-1989 at the time of preparing Panchnama that the name of the original accused no.1 was Ashwinbhai and not Arvindbhai. This witness has also denied the suggestion that the appellant-original accused no.1 had not given any bill to the appellant-original accused no.3 and asked him to prepare the receipt. This witness has denied the suggestion that he had been tutored to give such deposition.

12. I have also gone through the evidence of Ingvestigating Officer Mr. P.I.Vyas PW 3 at Exh.23 which lends corroboration to the evidence of complainant and Panch no.1 on the point of acceptance of amount of bribe money of Rs.300/- by the original accused no.2 from the complainant in presence of

Panch no.1. The trap is also found to be laid in a legal and proper manner and there is fair investigation as well.

13. Upon carefully scanning the evidence of the complainant it is found that on 29-11-1989 the appellant-original accused no.1 initially demanded bribe amount of Rs.400/- from the complainant by calling him at his office when he visited the residential house of the complainant on that day. The appellant-original accused no.1 also asked the complainant to see him on 30-11-1989 at his office., however, the complainant did not go on that day, however, as he was not willing to give the bribe money on 1-12-1989 the complainant went to the office of the ACB, Shahibaug, Ahmedabad, and lodged complaint following which the raids of 1-12-1989 and 2-12-1989 failed as on 1-12-1989 the relevant papers were not with the appellant-original accused no.1 and on 2-12-1989, the appellant-original accused no.1 was not available at his office. However, on the third occasion, as already discussed earlier, a successful raid was carried out when against the tax bill of Rs.58.12p. an amount of Rs.300/- was accepted by the appellant-original accused no.2 and put into the cash box after counting the same at the instance of the appellant-original accused no.3 as per the evil design and criminal intent of the appellant original accused no.1, that tainted currrency notes

were recovered from the cash box and presnece of anthracne powder was noticed on experiment being carried out under ultraviolet lamp in the currency notes, on the fingers and palms of the hands of the appellant-original accused no.2, on the right hand of the complainant, and in the inner portion of the cash box, on the inner portion of the pocket of the Jabha worn by the complainant and in its border, the currency notes so recovered tallied with the numbers mentioned in the first part of the Panchnama of 4-12-1989. The Panchnama is found to have been completed in presence of Panch no.1 who had remained with the complainant all through the transaction of 4-12-1989. Now in such cases, it is necessary to arrive at a finding as to for what motive or reward the illegal gratification is demanded. Undoubtedly, the tax bill Exh.16 is for the amount of Rs.58.12p. and not beyond that. There is also no evidence to show that there is any other dues to the Municipal Corporation from the complainant. On the contrary the evidence reflects that on 29-11-1989 the appellant-original accused no.1 visited the residential premises of the complainant for serving tax bill and on seeing some machineries meant for diamond cutting business lying there told the complainant that the premises is being used for non-residential premises and more tax will have to be paid The

appellant-original accused no.1 then invited the complainant to his office, demanded Rs.400/- for doing favour of reduction in taxes and also threatened the complainant that the matter will be brought to the notice of the superiors, but in fact he had not informed this fact to his superiors. Thus, it can be seen that there is enough motive which points out that the appellant-original accused no.1 in the discharge of his official duties as a public servant had a criminal intent to receive illegal gratification from the complainant as a reward for doing such official act in favour of the complainant. The complainant cannot also be termed as an accomplice as he is not a willing bribe giver.The complainant has been cross-examined at length, but nothing could be elicited so as to discredit the version given by him on the material aspect of demand offer and acceptance, and therefore, his evidence which inspires confidence cannot be thrown over-board even though there may be minor discrepancies here or there. Again, there is evidence on record to the effect that the appellant-original accused no.1 had in his possession the tax bill which is an official record right from 29-12-1989 to 4-12-1989 for which there is no explanation coming forth. The evidence of Panch no.1 lends corroboration to this effect when he says that he saw the appellant-original accused no.1

handed over the bill to the appellant-original accused no.2 on 4-12-1989. Even on the point that on 4-12-1989 on seeing the complainant, the appellant-original accused no.1 having called the appellant-original accused no.3 and asked him to prepare the bill and collect Rs.300/- which is in excess of the amount of tax bill of Rs.58.12p. receives corroboration from the evidence of Panch no.1. The factum of recovery of tainted currency notes from the cash box and the presence of anthracene powder on the individuals as narrated above is also substantiated by the evidence of Panch no.1 who is an independent witness, Investigating Officer Mr. Vyas as also the recovery Panchnama and seizure memos appearing on the record. It may be stated here that the Panchas in the instant case are indepenent Panchwitnesses which is borne out from the fact that despite three consecutive raids two of which on 1-12,1989, 2-12-989 had failed and even then on 4-12-1989 the appellant-original accused no.1 had enquired of the complainant as to why he did not turn up the other day which speaks volumes that the Panchas have not conspired with the original accused no.1. Not only that no enmity of the complainant with any of the appellants-accused is brought on record, moreover the raid of 4-12-1989 was successful.

14. Now,the appellant-original accused no.1 in his further

statement has in clear terms stated that he had not informed his superiors with regard to non-residential user of the premises in question by the complainant, however, the appellant original accused no.1 constantly demanded illegal gratification from the complainant by threatening him that this fact of non residential user will be disclosed to the superior officers if the amount of illegal gratification is not given. The accused no.1 has also not informed his superiors about the non residential user of the premises of the complainant nor issued any revised tax bill but he had kept the tax bill with him in his personal possession right from 1-12-1989 to 4-12-1989 i.e. the last date for payment of the tax bill which is indicative of the fact that he wanted to extract illegal gratification from the complainant. Not only that an amount of Rs.300/- inclusive of the tax bill amount of Rs.58.12p. has been accepted without hesitation even though both the appellant original accused no.1 and appellant-original accused no.3 had full knowledge that the tax amount was only Rs.58.12p. which speaks volumes about the ulterior motive of the appellants-accused to extract moneys by way of illegal gratification. Since the tax bill has remained with the appellant-original accused no.1 from 1-12-1989 till the last date of payment, it is but natural that the appellant-original

accused no.1 would have been worried and there was no alternative but to surrender to the illegal demand made by the appellant-original accused no.1 and ultimately, the amount of Rs.300/-inclusive of the tax bill of Rs.58.12p. was received through the appellant-original accused no.2. So far as the appellant-original accused no.3 is concerned, he had prepared the bill at the instructions of the accused no.1 and handed over the same to the appellant-original accused no.2 which fact is borne out from the further statement of the appellant-original accused no.1 when he states that from his possession, the tax bill was handed over to the appellant-original accused no.3. The duty of the complainant was only to serve the tax bill and not to make enquiries with regard to user from the property owners. It cannot therefore be disputed that the appellant-original accused no.1 has with a dishonest intention to gain illegal gratification from the complainant adopted wrongful and corrupt practice and in doing so he abused his position as a public servant. I may repeat here that the evidence as discussed above also shows that on 4-12-1989 the accused no.1 in presence of the Panch no.1 handed over the bill of Rs.58.12p. to the appellant original accused no.3 and told him to prepare the receipt and accept Rs.300/- whereupon the appellant-original accused no.3 prepared the

bill and handed over the same to the appellant-original accused no.2 who had received the amount of Rs.300/- upon a gesture having been made by the appellant-original accused no.3 by winking his eyes. The appellant-original accused no.2 then counted the notes and put them into the cash box. The only explanation tendered by the appellant-original accused no.2 is to the effect that the amount has been thrust into the cash box, but there is neither resistance on his part nor the matter has been reported to the superior officers. Apart from that there was heavy crowd of tax-payers on that day and for these reasons such explanation is not at all plausible and cannot be accepted. Under these circumstances, it is amply established that all the three appellants-original accused have participated in the commission of the offence and that the appellant-original accused no.1 is guilty of commission of offence under Sections 7 and 13(i)(d)(i) and (ii) of the Act,1988.

15. Time is now ripe to advert to the role attributed to the appellants-original accused nos.2 and 3 in the commission of the crime in question. Looking to the evidence as discussed above, it is an admitted position that the tax bill in respect of the residential premises of the complainant was of Rs.58.12p.against which an amount of Rs.300/- has been

received by the appellant-original accused no.2 in the manner as already described herein. All the three accused were working in the capacity of Junior Clerk in the same Zonal Office of the Corporation. There is therefore no posibility of receiving the amount of illegal gratification on the instruction of his superior officers. The appellant-original accused no.3 has prepared the bill and the appellant original accused no.2 had accepted the amount and counted the same. Therefore, both these appellants-accused are very well aware that the actual amount to be collected was only Rs.58.12p. and yet Rs.300/- inclusive of the amount of Rs.58.12p. has been accepted which indicates that these two accused wanted to assist in the evil design of the appellant-original accused no.1 in collecting illegal gratification. Thus, the fact that it is within the knowledge of the appellants-original accused nos.2 and 3 that an illegal act is being committed under their able assistance is sufficient to hold that the appellant-original accused nos.2 and 3 have aided and abetted in the commission of the crime in question, and therefore the guilt of these two accused of having committed offence under Section 12 of the Act is established beyond reasonable doubt.

16. The contention raised by the learned Counsel for the appellants-accused that there are major contradictions in the

evidence of the complainant regarding the time, date, and place in reference to demand of illegal gratification. As observed earlier the factum of demand has been proved through the evidence of complainant, Panch no.1 in as much as, as stated earlier, the first demand is made on 1-12-1989 at the residence of the complainant, second demand is made on 1-12-1989 near Rakhial and the third demand is made on 4-12-1989 when the appellant-original accused no.1 told the appellant-original accused no.3 in presence of Panch no.1 to prepare the tax bill of complainant and accept Rs.300/- including tax bill of Rs.58.12p. and the appellant-original accused no.3 by giving gesture by winking his eyes asked the appellant-original accused no.2 to accept the same The complainant is not shaken on this point even in cross-examination. Moreover, it is pertinent to note that the incident in question took place in the year 1989 while the evidence was recorded in 1993 after a lapse of four years and as such minor contradictions as to time of demand are bound to occur in the deposition of witnesses. The explanation tendered that the currency notes were thrust into the cash box by the complainant himself is also dealt with my me above. Some contradictions here or there which do not touch the root of the case cannot vitiate the whole trial. This is more so when

the evidence of witnesses corroborate each other and when their evidence is further supported by the documentary evidence like Panchnam, seizure memo complaint etc. as in the present case. No doubt further statement of the accused can be used for the purpose of corroboration. It is also significant to note that in his further statement the appellant-original accused no.1 has specifically admitted that he visited the house of the complainant on the relevant day and handed over the tax bill to him, but as he made enquiry regarding the construction of the additional room, the complainant got annoyed, insulted the appellant-original accused no.1 and refused to acknowledge the receipt of the bill and threw away the bill. So, the appellant-original accused no.1 left the house of the complainant with the tax bill. The appellant-original accused no.1 also stated that on 1-12-1989, the complainant came to him in his office and met him , but the tax bill of the complainant was lying in the dicky of the scooter and the scooter was not there. So, the appellant-original accused no.1 asked the complainant to come on the next day. The appellant-original accused no.1 also admitted that on 4-12-1989 also , the complainant came to his office and met him and just to help him as 4-12-1989 was the last date of payment of tax bill, he (appellant-original accused no.1) asked the appellant-

original accused no.3 to accept the amount and also asked to issue the receipt , and thereafter, he handed over the tax bill to the appellant-original accused no.3. In view of these admissions on the part of the appellant-original accused no.1, the contradictions regarding date time and place of demand as also the omissions of certain facts in the evidence of the complainant assumes no significance.

17. The contention raised by the learned Counsel that one Bharatbhai, friend of the complainant who was present with the complainant at the time of when the alleged initial demand of Rs.400/- was made has not been examined is of no avail as non-examination of this witness could not adversely affect the case of the appellants-accused as this witness could not have thrown any light so as to discard the whole prosecution evidence, especially when, there are sufficient written and documentary evidence as already discussed above in support of the prosecution case together with the consistent and reliable evidence of complainant, Panch no.1 and Investigating Officer Mr. Vyas.

18. The contention raised by the learned Counsel that as per the evidence of the complainant and Panchwitness, after lodging of the complaint, the appellant-original accused no.1

met them twice but no demand of illegal gratification is made is of no significance as demand need not necessarily be made by directly asking for the bribe amount on all occasions, but subsequent demands can be made by giving hints such as " What is to be done with regard to the matter of taxes?, giving gesture by winking the eys etc. Even the very fact of lodgng of complaint is indicate of an initial demand. This aspect has also been dealt with by me hereinabove.

19. The contention raised by the learned Counsel that same Panchas have been employed in all the three traps with an ulterior motive to falsely rope in the appellants-accused in the commission of the crime is not acceptable. As observed by me earlier, the Panchas are proved to be independent witness who have kept up the secret. Besides, there is nothing in the Rules or the Act which says that same Panchas cannot be used. If the Panchas were not independent and trustworthy, the trap would not have been successful.

20. The contention raised with regard to non examination of the receipt of Rs.58.12 (Exh.59) and tax Bill (Exh.16) under ultraviolet lamp is with an ulterior motive to involve the appellants-original accused in the crime in question does not merit any acceptance as that by itself cannot vitiate the whole trial. The fact remains that demand, offer ,acceptance and

recovery is proved on record through the trustworthy evidence of complainant, Panch no.1, Investigating Officer Mr. Vyas and documentary evidence like complaint, Panchnama, seizure memos etc. as discussed hereinabove. In the instant case, it cannot be disputed that the currency notes recovered from the cash box and on the hands of the appellant -original accused no.2 did show presence of anthracene powder. In view of this, experiment of ultraviolet lamp on the tax bill having been not carried out would not make any difference. Even otherwise, it has come in the evidence of the complainant that the appellant-original accused no.2 had first received Rs.300/- and then gave the tax bill of Rs.58.12.p. to him.

21. The contention raised by learned Counsel that the Investigating Officer has by hook or crook tried to rope in all the three appellants-accused in the commission of the crime with an ulterior motive also does not have any substance as it has not been proved that there exists any element of enmity between the Investigating Officer and the appellants-original accused or that the Investigating Officer was in hand and glove with the complainant.

22. The contention raised by the learned Counsel that incident of trap is totally got up and fabricated as 4-12-1989

was the last date for payment of tax bill and there was a huge crowd of tax payers on that day in the Municipal Corporation Office is also devoid of any merits as the complainant has been given special treatment and was not required to stand in queue and the amount of bribe was accepted by the appellant-original accused no.2 in the manner as depicted by be hereinabove.

23. The contention raised by the learned Counsel that the fact regarding the gesture given by the accused no.3 to the appellant-original accused no.2 to receive the amount of bribe money having come for the first time in the evidence of the complainant is also devoid of any merits as such minor omissions are bound to occur in such cases when testimony is recorded after a long period of time , especially when, the complainant hails from the lower strata of society.

24. Learned Counsl has also raised the contention that there is definite attempt during investigation to involve all the three appellants-original accused by incorporating certain aspects of the prosecution case. Learned Counsel pointed out from the Panchnama that when complainant and Panch no.1 met the accused no.1 near the gate of the Municipal Corporation bulding on 4-12-1989, on seeing the complainant, the appellant-original accused no.1 asked him as to why he did not

come on Saturday to which the complainant had answered that he came on Saturday but the appellant-original accused no.1 himself was not present and so he left the office. Then the appellant-original accused no.1 told the complainant that he had already apprised the appellant-original accused no.3 about all the talk that had taken place between himself(original accused no.1) and the complainant and had also asked the appellant-original accused no.3 to do the work of the complainant. The appellant-original accused no.1 also told the complainant that he had gone outstation on Saturday. According to the learned Counsel, the appellant-original accused no.1 who had gone on leave could not have put this question. It is pertinent to note that in cross-examination, the complainant has admitted that when the complainant met the appellant-original accused no.1 at his office on 4-12-1989, the appellant-original accused no.1 has put such a question and that the complainant had given such a reply. Even if the appellant-original accused no.1 was on leave on Saturday, it is quite possible that in order to ascertain whether the complainant has turned up on 4-12-1989 and met the appellant-original accused no.3 or not, the appellant-original accused no.1 had put such question and when these statements made in the Panchnama finds corroboration from

the evidence of the complainant, there is no reason to disbelieve the same. This contention has, therefore, to be rejected.

25. The contention raised by the learned Counsel that phenolphthalein powder was not used in the trap, and therefore, the appellants-accused is entitled to the benefit of doubt has also no substance in view of the decision rendered in the case of Gopalbhai Oghadbhai Parekh v. State of Gujarat reported in 2002(1) G.L.R. 89 wherein the Division Bench of this Court while dealing with this issue had held that the use of phenolphthalein powder was mandatory and negatived the argument that the accused must be acquitted on this count. The decision in the case of Nathalal Govindji Vaghela v. State of Gujarat reported in 1979(2) G.L.R. 190, therefore, cannot be of any help to the appellants-original accused. The decision in the case of Gopal Lal Ghisul Chhipa and Ors. vs. State of Gujarat reported in 1998 (1) G.L.H. 943 relied on by Mr. Shah is also overruled by the judgment in Gopalbhai Oghadbhai's case (supra), and hence, not relevant.

26. No other contentions have been raised.

27. In support of his submissions, learned Counsel Mr. A.D.Shah has relied on (1) the judgments delivered by this Court in the case of Amrishbhai Manubhai Brahmbhatt and

Anr. vs. State of Gujarat reported in 2007(2) G.L.H. 650, and (2) Ganga Kumar Srivastav v. State of Bihar reported in AIR 2005 SC 3123, however, the facts in these two decisions being entirely different from that of the present case, the authorities cited cannot be pressed into service.

24. Thus, on overall appreciation of the evidence, I do not find any merit in the submissions made on behalf of the appellants-original accused nos.1, 2 and 3. I am of the view that no interference is called for in the impugned judgment so far as conviction of the appellants-original accused is concerned. Consequently, I uphold the impugned judgment so far as conviction of the appellants-accused is concerned as the charges levelled against the appellant original-accused no.1 under Section 7 and 13(1(d)(i) and (ii) of the Act as also the charges levelled against the appellant original accused nos.2 and 3 under Sec.12 of the Act are proved beyond reasonable doubt, however, having regard to the facts and circumstances of the present case, I deem it just and proper to alter the sentence imposed on the appellants-original accused nos.2 and 3.

28. In the result, the appeals are partly allowed. The judgment and order of conviction and sentenced passed by the learned Special Judge, Ahmedabad, in Special Case no.31 of

1990 qua the appellant-original accused no.1-Ashwinbhai Haribhai Anand is hereby confirmed while qua the appellant-original accused nos.2-Merubhai Maganbhai Solanki and the appellant-original accused no. 3-Pritin Maheshkumar Bhavsar, the sentence of S.I for two years imposed on each of them shall stand reduced to S.I. for one year. The sentence of fine imposed on the appellants-original accused nos.2 and 3 shall remain unaltered. Bail bonds of the appellants-original accused nos.2 and 3 shall stand cancelled. The appellants-original accused nos.1, 2 and 3 are directed to surrender before the jail authority within eight weeks. Muddammal articles to be disposed of in terms of the directions given by the trial Judge in the impugned judgment.

(M.D.Shah,J.)

lee.